

1 Ronald P. Oines (CA No. 145016)
Edson K. McClellan (CA No. 199541)
2 Kenneth J. Zielinski (CA No. 258555)
RUTAN & TUCKER, LLP
3 611 Anton Boulevard, Suite 1400
Costa Mesa, California 92626-1931
4 Telephone: (714) 641-5100
Facsimile: (714) 546-9035
5 Email: roines@rutan.com
emcclellan@rutan.com
6 kzielinski@rutan.com

7 Louis M. Bubala III (NV No. 8974)
Kaempfer Crowell
8 50 West Liberty Street, Suite 700
Reno, Nevada 89501
9 Telephone: (775) 852-3900
Facsimile: (775) 327-2011
10 Email: lbubala@kenvlaw.com

11 Attorneys for Plaintiff
GEO-LOGIC ASSOCIATES, INC.

13 UNITED STATES DISTRICT COURT

14 DISTRICT OF NEVADA

15 GEO-LOGIC ASSOCIATES, INC., a
California corporation,

16 Plaintiff,

17 vs.

18 METAL RECOVERY SOLUTIONS, INC., a
19 Nevada corporation, et al.,

20 Defendants.

Case No. 3:20-cv-00180-MMD-WGC

**STIPULATION AND
PROTECTIVE ORDER**

21
22 **IT IS HEREBY STIPULATED** by and between Plaintiff Geo-Logic Associates,
23 Inc. ("Plaintiff") and Defendants Metal Recovery Solutions, Inc., Thomas Seal, Jette Seal
24 and Differential Engineering, Inc. (collectively, "Defendants") (Plaintiff and Defendants
25 are, collectively, the "Parties"), by and through their respective counsel of record, that in
26 order to facilitate the exchange of information and documents which may be subject to
27 confidentiality limitations on disclosure due to federal laws, state laws, and privacy rights,
28 the Parties stipulate as follows:

1 1. In this Stipulation and Protective Order, the words set forth below shall
2 have the following meanings:

3 a. “Proceeding” means this case.

4 b. “Court” means this Court and its staff.

5 c. “Confidential” means any Documents, Testimony, or Information
6 that is in the possession of a Designating Party who believes in good faith that such
7 Documents, Testimony, or Information is entitled to confidential treatment under
8 applicable law.

9 d. “Confidential Materials” means any Documents, Testimony, or
10 Information as defined below designated as “Confidential” pursuant to the provisions of
11 this Stipulation and Protective Order.

12 e. “Designating Party” means the Party or non-party that designates
13 Documents, Testimony, or Information, as defined below, as “Confidential.”

14 f. “Disclose,” “Disclosed,” or “Disclosure” means to reveal, divulge,
15 give, or make available Materials, or any part thereof, or any information contained
16 therein.

17 g. “Documents” means (i) any “Writing,” “Original,” and “Duplicate”
18 as those terms are defined in Fed. R. Evid. 1001, Documentary and Other Physical
19 Evidence, which have been produced in discovery in this Proceeding by any person or
20 entity, and (ii) any copies, reproductions, or summaries of all or any part of the foregoing.

21 h. “Highly Confidential” means Attorneys’ Eyes Only Documents,
22 Testimony, or Information that is in the possession of a Designating Party who believes
23 that disclosure to another Party or non-party would violate applicable law; materially
24 injure the Designating Party, its business, or a third party; put the Designating Party at a
25 competitive disadvantage; or damage any investigation by law enforcement.

26 i. “Highly Confidential Materials” means any Documents, Testimony,
27 or Information as defined and designated as “Highly Confidential” pursuant to the
28 provisions of this Stipulation and Protective Order.

- 1 j. “Information” means the content of Documents or Testimony.
- 2 k. “Testimony” means all depositions, declarations, or other testimony
- 3 taken or used in this Proceeding.
- 4 2. The entry of this Stipulation and Protective Order does not alter, waive,
- 5 modify, or abridge any right, privilege, or protection otherwise available to any Party
- 6 with respect to the discovery of matters, including but not limited to any Party’s right to
- 7 assert the attorney-client privilege, the attorney work-product doctrine, or other
- 8 privileges, or any Party’s right to contest any such assertion.
- 9 3. The “Confidential” or “Highly Confidential” designation should not
- 10 obscure or interfere with the legibility of the designated Information.
- 11 a. For Documents (apart from transcripts of depositions or other
- 12 pretrial or trial proceedings), the Designating Party must affix the legend “Confidential”
- 13 or “Highly Confidential” on each page of any Document containing such designated
- 14 material.
- 15 b. For Testimony given in depositions the Designating Party may
- 16 either:
- 17 i) identify on the record, before the close of the deposition, all
- 18 “Confidential” or “Highly Confidential” Testimony, by specifying all portions of the
- 19 Testimony that qualify as “Confidential” or “Highly Confidential;” or
- 20 ii) designate the entirety of the Testimony at the deposition as
- 21 “Confidential” or “Highly Confidential” (before the deposition is concluded) with the
- 22 right to identify more specific portions of the Testimony as to which protection is sought
- 23 within 30 days following receipt of the deposition transcript. In circumstances where
- 24 portions of the deposition Testimony are designated for protection, the transcript pages
- 25 containing “Confidential” or “Highly Confidential” Information may be separately bound
- 26 by the court reporter, who must affix to the top of each page the legend “Confidential” or
- 27 “Highly Confidential” as instructed by the Designating Party.
- 28 c. For Information produced in some form other than Documents, and

1 for any other tangible items, including, without limitation, compact discs or DVDs, the
2 Designating Party must affix in a prominent place on the exterior of the container or
3 containers in which the Information or item is stored the legend “Confidential” or
4 “Highly Confidential.” If only portions of the Information or item warrant protection, the
5 Designating Party, to the extent practicable, shall identify the “Confidential” or “Highly
6 Confidential” portions.

7 4. The production by any of the undersigned Parties or non-Parties to the
8 Proceedings of any Document, Testimony, or Information during discovery in this
9 Proceeding without a “Confidential” or “Highly Confidential” designation shall be
10 without prejudice to any claim that such item is “Confidential” or “Highly Confidential,”
11 and such Party shall not be held to have waived any rights by such production. In the
12 event that any Document, Testimony, or Information that is subject to a “Confidential” or
13 “Highly Confidential” designation is produced without such designation, the Party that
14 produced the document may thereafter designate such documents as “Confidential” or
15 “Highly Confidential” by giving written notice to all parties that the material is to be so
16 designated. All Parties shall then stamp or otherwise mark the designated material as
17 “Confidential” or “Highly Confidential,” as described above.

18 5. Each Party or non-party that designates Documents, Testimony or
19 Information in discovery as “Confidential” or “Highly Confidential” must take care to
20 limit any such designation to specific material that qualifies under the appropriate
21 standards. A Designating Party must take care to designate for protection only those
22 parts of Documents, Testimony, or Information so that other portions of the Documents,
23 Testimony, or Information for which protection is not warranted are not swept
24 unjustifiably within the ambit of this Order. Mass, indiscriminate, or routinized
25 designations are prohibited. Designations that are shown to be clearly unjustified, or that
26 have been made for an improper purpose (e.g., to unnecessarily encumber or slow down
27 the case development process, or to impose unnecessary expenses or burdens on other
28 parties), may expose the Designating Party to sanctions.

1 6. In the event that counsel for a Party receiving Documents, Testimony or
2 Information in discovery designated as “Confidential” or “Highly Confidential” objects
3 to such designation with respect to any or all of such items, said counsel (“Objecting
4 Party”) shall advise counsel for the Designating Party, in writing, of such objections, the
5 specific Documents, Testimony or Information to which each objection pertains, and the
6 specific reasons and support for such objections (the “Designation Objections”). Counsel
7 for the Objecting Party shall have thirty (30) days from receipt of the written Designation
8 Objections to either (a) agree in writing to de-designate Documents, Testimony, or
9 Information pursuant to any or all of the Designation Objections and/or (b) file a motion
10 with the Court seeking to change any or all designations on Documents, Testimony, or
11 Information addressed by the Designation Objections (the “Designation Motion”).
12 Pending a resolution of the Designation Motion by the Court, any and all existing
13 designations on the Documents, Testimony, or Information at issue in such Motion shall
14 remain in place. The Designating Party shall have the burden on any Designation Motion
15 of establishing the applicability of its “Confidential” or “Highly Confidential”
16 designation.

17 7. Access to and/or Disclosure of Confidential Materials shall be permitted
18 only to the following persons or entities:

- 19 a. the Court;
- 20 b. (1) Attorneys of record in the Proceeding and their affiliated
21 attorneys, paralegals, clerical and secretarial staff employed by such attorneys who are
22 actively involved in the Proceeding and who are not employees of any Party; (2) In-
23 house counsel to the undersigned Parties and the paralegal, clerical and secretarial staff
24 employed by such counsel. Each non-lawyer given access to Confidential Materials shall
25 be advised that such materials are being Disclosed pursuant, and are subject to, the terms
26 of this Stipulation and Protective Order and may not be Disclosed to others than pursuant
27 to its terms;
- 28 c. those officers, directors, partners, members, employees and agents of

1 all non-designating Parties that counsel for such Parties deems necessary to aid counsel in
2 the prosecution and defense of this Proceeding; provided, however, that prior to the
3 Disclosure of Confidential Materials to any such officer, director, partner, member,
4 employee or agent, counsel for the Party making the Disclosure shall deliver a copy of
5 this Stipulation and Protective Order to such person and shall explain that such person is
6 bound to follow the terms of such Order;

7 d. court reporters in this Proceeding (whether at depositions, hearings,
8 or any other proceeding);

9 e. any deposition, trial, or hearing witness in the Proceeding who
10 previously has had access to the Confidential Materials, or who is currently or was
11 previously an officer, director, partner, member, employee or agent of an entity that has
12 had access to the Confidential Materials;

13 f. any deposition or non-trial hearing witness in the Proceeding who
14 previously did not have access to the Confidential Materials; provided, however, that
15 each such witness given access to Confidential Materials shall be advised that such
16 materials are being Disclosed pursuant and subject to the terms of this Stipulation and
17 Protective Order and may not be Disclosed other than pursuant to its terms;

18 g. mock jury participants, provided, however, that prior to the
19 Disclosure of Confidential Materials to any such mock jury participant, counsel for the
20 Party making the Disclosure shall deliver a copy of this Stipulation and Protective Order
21 to such person and shall explain that such person is bound to follow the terms of such
22 Order, and such person will sign a copy of this Stipulation and Protective Order;

23 h. outside experts or expert consultants consulted by the undersigned
24 Parties or their counsel in connection with the Proceeding, whether or not retained to
25 testify at any oral hearing; provided, however, that prior to the Disclosure of Confidential
26 Materials to any such expert or expert consultant, counsel for the Party making the
27 Disclosure shall deliver a copy of this Stipulation and Protective Order to such person
28 and shall explain its terms to such person, and such person will sign a copy of this

1 Stipulation and Protective Order. It shall be the obligation of counsel, upon learning of
2 any breach or threatened breach of this Stipulation and Protective Order by any such
3 expert or expert consultant, to promptly notify counsel for the Designating Party of such
4 breach or threatened breach; and any other person or entity that the Designating Party
5 agrees to in writing.

6 8. Access to and/or Disclosure of Highly Confidential Materials shall be
7 permitted only to the following persons or entities:

8 a. the Court;

9 b. Attorneys of record in the Proceeding and their affiliated attorneys,
10 paralegals, clerical and secretarial staff employed by such attorneys who are actively
11 involved in the Proceeding and who are not employees, contractors, joint venturers or
12 investors of any Party;

13 c. court reporters in this Proceeding (whether at depositions, hearings,
14 or any other proceeding);

15 d. outside experts or expert consultants consulted by the undersigned
16 Parties or their counsel in connection with the Proceeding, whether or not retained to
17 testify at any oral hearing; provided, however, that prior to the Disclosure of Highly
18 Confidential Materials to any such expert or expert consultant, counsel for the Party
19 making the Disclosure shall deliver a copy of this Stipulation and Protective Order to such
20 person and shall explain its terms to such person, and such person will sign a copy of this
21 Stipulation and Protective Order. It shall be the obligation of counsel, upon learning of
22 any breach or threatened breach of this Stipulation and Protective Order by any such expert
23 or expert consultant, to promptly notify counsel for the Designating Party of such breach
24 or threatened breach; and any other person or entity that the Designating Party agrees to in
25 writing;

26 e. the author of the document or the original source of the information;
27 and

28 f. Highly Confidential Materials shall not be permitted to employees,

1 contractors, joint venturers or investors of any Party.

2 9. Confidential or Highly Confidential Materials shall be used by the persons
3 or entities receiving such materials only for the purposes of preparing for, conducting,
4 participating in, prosecuting and/or defending the Proceeding, and not for any business or
5 other purpose whatsoever.

6 10. Any Party to the Proceeding (or other person subject to the terms of this
7 Stipulation and Protective Order) may ask the Court, after appropriate notice to the other
8 Parties to the Proceeding, to modify or grant relief from any provision of this Stipulation
9 and Protective Order.

10 11. Entering into, agreeing to, and/or complying with the terms of this
11 Stipulation and Protective Order shall not:

12 a. operate as an admission by any person that any particular Document,
13 Testimony, or Information marked “Confidential” or “Highly Confidential” contains or
14 reflects trade secrets, proprietary, confidential or competitively sensitive business,
15 commercial, financial or personal information; or

16 b. prejudice in any way the right of any Party (or any other person
17 subject to the terms of this Stipulation and Protective Order):

18 i) to seek a determination by the Court of whether any particular
19 Confidential or Highly Confidential Materials should be subject to protection under the
20 terms of this Stipulation and Protective Order; or

21 ii) to seek relief from the Court on appropriate notice to all other
22 Parties to the Proceeding from any provision(s) of this Stipulation and Protective Order,
23 either generally or as to any particular Document, Material or Information.

24 12. Any Party to the Proceeding who has not executed this Stipulation and
25 Protective Order as of the time it is presented to the Court for signature may thereafter
26 become a Party to this Stipulation and Protective Order by its counsel’s signing and
27 dating a copy thereof, filing the same with the Court, and serving copies of such signed
28 and dated copy upon the other Parties to this Stipulation and Protective Order.

1 13. Any Information that may be produced by a non-Party witness in discovery
2 in the Proceeding pursuant to subpoena or otherwise may be designated by such non-
3 Party as “Confidential” or “Highly Confidential” under the terms of this Stipulation and
4 Protective Order, and any such designation by a non-Party shall have the same force and
5 effect, and create the same duties and obligations, as if made by one of the undersigned
6 Parties hereto. Any such designation shall also function as consent by such producing
7 non-Party to the authority of the Court in the Proceeding to resolve and conclusively
8 determine any motion or other application made by any person or Party with respect to
9 such designation, or any other matter otherwise arising under this Stipulation and
10 Protective Order.

11 14. If any person subject to this Stipulation and Protective Order who has
12 custody of any Confidential or Highly Confidential Materials receives a subpoena or
13 other process (“Subpoena”) from any government or other person or entity demanding
14 production of such materials, the recipient of the Subpoena shall promptly give notice of
15 the same by electronic mail transmission, followed by either express mail or overnight
16 delivery to counsel of record for the Designating Party, and shall furnish such counsel
17 with a copy of the Subpoena. Upon receipt of this notice, the Designating Party may, in
18 its sole discretion and at its own cost, move to quash or limit the Subpoena, otherwise
19 oppose production of the Confidential Materials and/or seek to obtain confidential
20 treatment of such materials from the subpoenaing person or entity to the fullest extent
21 available under law. The recipient of the Subpoena may not produce any Confidential
22 Materials pursuant to the Subpoena prior to the date specified for production on the
23 Subpoena.

24 15. Nothing in this Stipulation and Protective Order shall be construed to
25 preclude either Party from asserting in good faith that certain Confidential or Highly
26 Confidential Materials require additional protection. The Parties shall meet and confer to
27 agree upon the terms of such additional protection.

28 16. If any Confidential or Highly Confidential Materials submitted by a

1 Designating Party under the terms of this Stipulation and Protective Order is Disclosed
2 by a non-Designating Party to any person other than in the manner authorized by this
3 Stipulation and Protective Order, the non-Designating Party responsible for the
4 Disclosure shall bring all pertinent facts relating to the Disclosure of such Confidential or
5 Highly Confidential Materials to the immediate attention of the Designating Party.

6 17. This Stipulation and Protective Order is entered into without prejudice to
7 the right of any Party to knowingly waive the applicability of this Stipulation and
8 Protective Order to any Confidential or Highly Confidential Materials designated by that
9 Party by advising the other party that the Confidentiality designation no longer applies.

10 18. The Parties shall meet and confer regarding the procedures for use of any
11 Confidential or Highly Confidential Materials at the trial of this proceeding and shall
12 move the Court for entry of an appropriate order.

13 19. Nothing in this Stipulation and Protective Order shall affect the
14 admissibility into evidence of Confidential or Highly Confidential Materials, or abridge
15 the rights of any person to seek judicial review or to pursue other appropriate judicial
16 action with respect to any ruling made by the Court concerning the issue of the status of
17 any Confidential or Highly Confidential Materials.

18 20. This Stipulation and Protective Order shall continue to be binding after the
19 conclusion of this Proceeding and all subsequent proceedings arising from this
20 Proceeding, except that a Party may seek the written permission of the Designating Party
21 or may move the Court for relief from the provisions of this Stipulation and Protective
22 Order. To the extent permitted by law, the Court shall retain jurisdiction to enforce,
23 modify, or reconsider this Stipulation and Protective Order, even after the Proceeding is
24 terminated.

25 21. Upon written request made within thirty (30) days after the settlement or
26 other termination of the Proceeding, the Parties shall have thirty (30) days to either
27 (a) promptly return to counsel for each Designating Party all Confidential or Highly
28 Confidential Materials, and all copies thereof (except that counsel for each Party may

1 maintain in its files, in continuing compliance with the terms of this Stipulation and
2 Protective Order, all work product, and one copy of each pleading filed with the Court
3 and one copy of each deposition together with the exhibits marked at the deposition), (b)
4 agree with counsel for the Designating Party upon appropriate methods and certification
5 of destruction or other disposition of such materials, or (c) as to any Documents,
6 Testimony, or other Information not addressed by sub-paragraphs (a) and (b), file a
7 motion seeking an order regarding proper preservation of such Materials. To the extent
8 permitted by law the Court shall retain continuing jurisdiction to review and rule upon the
9 motion referred to in sub-paragraph (c) herein. Notwithstanding the foregoing, the
10 Parties may retain one copy of Confidential or Highly Confidential Materials to the
11 extent required to comply with insurance carrier or other legal obligations. Such
12 materials shall be destroyed promptly after the time period has expired to comply with
13 insurance carrier or other legal obligations.

14 22. After this Stipulation and Protective Order has been signed by counsel for
15 all Parties, it shall be presented to the Court for entry. Counsel agree to be bound by the
16 terms set forth herein with regard to any Confidential or Highly Confidential Materials
17 that have been produced before the Court signs this Stipulation and Protective Order.
18 Counsel and the Parties likewise agree that Confidential or Highly Confidential Materials
19 marked as either “Confidential” or “Highly Confidential” in 3:17-cv-00563-MMD-WGC
20 and Arbitration Case No. 1260004635 will be treated in this action in accord with the
21 terms of this Protective Order.

22 23. The Parties agree to be bound by this Stipulation and Protective Order
23 pending its approval and entry by the Court. In the event that the Court modifies this
24 Stipulation and Protective Order, or in the event that the Court enters a different
25 Protective Order, the Parties agree to be bound by this Stipulation and Protective Order
26 until such time as the Court may enter such a different Order. It is the Parties’ intent to
27 be bound by the terms of this Stipulation and Protective Order pending its entry so as to
28 allow for production or use of Confidential or Highly Confidential Materials under the

1 terms herein.

2 This Stipulation and Protective Order may be executed in counterparts.

3 Dated: April 9, 2020

KAEMPFER CROWELL

4 By: /s/ Louis M. Bubala III

5 Louis M. Bubala III
6 Attorneys for Plaintiff GEO-LOGIC
ASSOCIATES, INC.

7 Dated: April 9, 2020

BROWNSTEIN HYATT FARBER
8 SCHRECK, LLP
MICHAEL D. ROUNDS
9 ADAM K. YOWELL

10 By: /s/ Michael D. Rounds

11 Michael D. Rounds
12 Attorneys for Defendants METAL
RECOVERY SOLUTIONS, INC.,
13 THOMAS SEAL, P.F.D, JETTE SEAL
and DIFFERENTIAL ENGINEERING,
14 INC.

15 **ORDER**

16 Paragraph 20 of the Stipulation is modified to reflect that although the parties may
17 agree to be bound by the confidentiality terms of this Order beyond the conclusion of
18 this lawsuit, the dismissal of this action will terminate the jurisdiction of this Court.

19 **IT IS SO ORDERED.**

20 Dated: April 10, 2020



United States Magistrate Judge